

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795 <div>STAFF REPORT</div>	Hearing Date/Agenda Number P.C. 05/08/02 3.f.	
	File Number CP02-011	
	Application Type Conditional Use Permit	
	Council District 4	
	Planning Area Berryessa	
	Assessor's Parcel Number(s) 245-05-010	

PROJECT DESCRIPTION	Completed by: Caleb Gretton
Location: Southwest side of North Capitol Avenue approximately 240 feet northerly of Berryessa Road	
Gross Acreage: 9.17	Net Acreage: 9.17 Net Density: n/a
Existing Zoning: CG-General Commercial	Existing Use: Restaurant
Proposed Zoning: No change	Proposed Use: 24 hour operation and entertainment use for the existing restaurant

GENERAL PLAN	Completed by: CG
Land Use/Transportation Diagram Designation General Commercial	Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING	Completed by: CG
North: Commercial	CG-General Commercial
East: Residential	RM (PD) Planned Development
South: Commercial	CN-Neighborhood Commercial
West: Movie theater complex	CG-General Commercial

ENVIRONMENTAL STATUS	Completed by: CG
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration <input type="checkbox"/> Negative Declaration adopted on	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete

FILE HISTORY	Completed by: CG
Annexation Title: Berryessa No. 16	Date: December 3, 1971

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input type="checkbox"/> Uphold Director's Decision	Date: _____	Approved by: _____ <input type="checkbox"/> Action <input type="checkbox"/> Recommendation

APPLICANT/DEVELOPER	OWNER	
Alejandro Custodio Ituro Mo Kabalen Restaurant 2822 Glen Dixon Court San Jose CA 95148	SyuFy Enterprises M.S. Darley 150 Pelican Way San Rafael, CA 94901	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: CG

Department of Police

No Comment

Other Departments and Agencies

None received

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Alejandro Custodio, is requesting a Conditional Use Permit to allow for 24-hour operation and entertainment use (karaoke) at the existing Ituro Mo Kabalen Restaurant located on North Capitol Avenue approximately 240 feet northerly of Berryessa Road. The existing 'sit down' restaurant has a maximum seating capacity of 99 people and is not proposed to be modified with this permit. No additions or alterations are proposed to the exterior of the building. Currently, the hours of operation are from 6:00 a.m. to 11 p.m. The restaurant currently has a permit for the sale of Beer and Wine. The restaurant does not provide for outdoor operations.

The surrounding land uses are commercial to the north, south and west. Multi-family residential uses exist to the east across North Capitol Avenue.

An entertainment establishment is defined as any establishment (indoors or outdoors) where entertainment, either passive or active, is provided for the pleasure of the patrons, either independent or in conjunction with any other use. Such entertainment includes but is not limited to, vocal instrumental music, dancing, karaoke, comedy, and acting.

The Zoning Ordinance requires businesses within the CG General Commercial Zoning District to obtain approval of a Conditional Use Permit to incorporate entertainment uses to the existing use as well as to operate between the hours of 12 a.m. midnight and 6 a.m.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act, in that there is negligible expansion of the existing use or structures.

GENERAL PLAN CONFORMANCE

The proposed 24-hour use and entertainment operation of a restaurant use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial, in that it is a commercial use permitted in the General Commercial Land Use Designation with the approval of a Conditional Use Permit.

ANALYSIS

The key issues analyzed for the proposed project include: 1) consistency with the City's Policy for Evaluation of 24-hour uses, 2) consistency with the City's Policy for Evaluation of Entertainment Establishments, and 3) site location considerations.

Consistency with the Policy for Evaluation of 24-hour Uses

The City Council Policy (6-27) for Evaluation of 24-hour Uses (attached) is intended to provide guidelines for the appropriate development of commercial businesses that operate on a 24-hour basis in the City. The Policy identifies the key issues as the type of establishment (sit-down or take-out), exterior cleanup, noise and land use separation.

The policy states that "Sit down restaurants" do not generally exhibit the problems normally associated with "take-out restaurants" because patrons do not remain in their vehicles in the parking lot and food is consumed within the building with appropriate supervision. Litter is not typically a problem as food is not served in disposable wrappings or containers. Therefore, impacts from littering, loitering, and noise are substantially reduced by the nature of the proposed use.

Generally, the Policy recommends a 300-foot separation between late night uses and residential properties. However, this requirement may be reduced or increased upon review of the specific circumstances of the project. The proposed project provides physical separation of approximately 130 feet from the nearest residential use. North Capitol Avenue, a major thoroughfare containing six lanes of moving traffic, separates the restaurant from the adjacent neighborhood. Non-project related traffic noise from North Capitol Avenue is likely to be louder than the restaurant operation, including during evening hours. Therefore, it is unlikely that any noise from the proposed use will be audible or distinguishable from traffic noise at the closest residential property line. For these reasons the proposed project would be consistent with Council Policy.

Entertainment Establishments

The City's Policy (6-23) for Evaluation of Bars and Nightclubs (attached) is intended to provide guidelines for appropriate development of entertainment uses. The policy identifies the key issues of land use compatibility, noise, garbage and litter, and restrictions on use.

Land use compatibility. Per the Policy, the proposed establishment is dispersed from other drinking/entertainment establishments and is not within 500 feet of a school. In addition, the Police Department has not indicated the existing use has been a law enforcement problem, nor has it suggested that the addition of entertainment use would pose a law enforcement problem.

Noise. The operation of the entertainment use has been regulated to protect surrounding uses. All entertainment will occur within the existing building. As there is no proposed construction, surrounding uses will not be impacted from noise associated with construction activities.

Garbage and litter. The project will be required to keep all publicly-used areas free of litter, trash, cigarette butts, and garbage, and will wash or sweep daily the sidewalks in front of the building.

Use restrictions. Per the Policy, the drinking and entertainment establishment will not operate after 2:00 AM daily, although the restaurant only is to operate 24 hours a day under this permit. The draft permit includes a five-year time limit condition. After five years if the operation wishes to continue the entertainment activity, the establishment will need to be reevaluated for compatibility with surrounding uses and applicable land use policies.

Site Location Considerations

The restaurant tenant space is located near the main project entry to the overall commercial complex and is directly adjacent to the street. The site landscaping and restaurant building are well maintained, giving the site a visually positive appearance. Since the building is located next to a major thoroughfare, North Capitol Avenue, it is well suited for 24-hour operation and provides good opportunities for direct surveillance from the street. The existing parking meets the city's parking requirements for the restaurant use. Since the city parking requirement is based on the number of dining seats or dining area, and no increase in the dining space or seating area is proposed, no additional parking will be required. The restaurant shares parking with the other commercial uses in the commercial complex. The required parking spaces are located directly in front of the restaurant. Parking should be adequate for the restaurant during the proposed expanded hours of operation from 12 midnight to 6:00 a.m.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG General Commercial Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. The subject site is generally surrounded by commercial shopping center uses to the north, south, west, and multi-family detached residential uses to the east across North Capitol Avenue.
5. The existing use is a 'sit-down' restaurant containing 99 dining seats. The project would add entertainment and a 24-hour use.
6. The restaurant is proposing to extend its operating hours past midnight.

7. The project proposes the addition of entertainment activities that would constitute an entertainment establishment.
8. No building additions or increase in net usable area for patrons is proposed. No exterior changes are proposed to the structure.
9. As conditioned by this Permit, entertainment will occur within the building and will not operate past the hour of 2:00 a.m.
10. The restaurant shares parking with the Commercial Business Park.
11. The restaurant tenant space is located directly adjacent to North Capitol Avenue, a six-lane arterial street.
12. The project is separated from adjacent residential uses by said six-lane arterial street.
13. The existing restaurant building and site landscaping are well maintained.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project will be consistent with the adopted San Jose 2020 General Plan Land Use/Transportation Diagram of the City of San Jose.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with the intent of the Council Policy 6-27 for Evaluation of 24-hour Uses.
5. The proposed project is consistent with the intent of the Council Policy 6-23 for the Evaluation of Nightclubs and Bars.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be signed, notarized, and returned to the Department of City Planning within 60 days from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** The proposed 24 hours use shall apply only to Lee Noodle House Restaurant as shown on the approved plans entitled, "Capitol Business Park, 1155 North Capitol Avenue, San Jose, CA, dated August 1, and February 15, 2001 on file with the Department of Planning, Building, and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Landscaping.** Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be maintained in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.

4. **Exterior Improvements.** No exterior improvements have been approved with this Permit. Any proposed exterior improvements are subject to approval by the Director of Planning.
5. **Roof Equipment.** No new roof equipment is approved with this permit. Installation of new roof equipment is subject to approval by the Director of Planning.
6. **Signs.** No new signs are approved with this permit. New signs are subject to approval by the Director of Planning.
7. **Hours of Operation.** The restaurant use is allowed to operate for 24 hours for service within the interiors of the building. No outdoor waiting or seating areas are approved for 24-hour use with this project. The entertainment use shall be limited to 6 AM to 2 AM daily.
8. **Lighting.** Any new on-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Light levels at 1.5 or greater foot-candles average illumination at ground surface are discouraged. Lighting in the parking lot directly in front of the restaurant may be other than low-pressure sodium. Electroliers shall not exceed 17 feet above grade.
9. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
10. **Trash and Litter.** Cleaning shall include keeping the publicly-used areas free of litter, trash, cigarette butts and garbage, and shall include daily washing of sidewalks along the project's frontage on North Capitol Avenue.
11. **Restroom Facilities.** Restroom facilities shall remain open during late night business hours.
12. **Exterior Clean Up.** Exterior clean up and maintenance activities including garbage pick up shall not occur later than 10:00 PM or prior to 7:00 AM.
13. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 24 hours of defacement.
14. **Hazardous Materials Storage.** This permit does not include any approval of facilities or areas on within, or under the site to be used for the storage of hazardous, toxic, flammable, or combustible materials, and such facilities or areas are subject to review under separate permits.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire one (1) year from and after the date of adoption of the Resolution by the Planning Commission or by the City Council on appeal, granting this Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission.

2. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five (5) year from the date of approval of this permit unless, the Director of Planning approves a Permit Adjustment to extend the validity of this Permit for a period of up to two years upon finding that the use has not resulted in significant police issues related to nuisances or disturbances. The Permit Adjustment must be approved prior to the expiration of this Permit.
 3. **Compliance Review.** A Compliance Hearing may be required at the discretion of the Planning Commission at any time during the length of this permit.
 4. **Renewal.** If a permit adjustment is not obtained for time extension as noted above in # 2, the permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application provided by the Department of Planning, Building, and Code Enforcement. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
 5. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
- c: Alejandro Custodio, Ituro Mo Kabalen, 2822 Glen Dixon Court, San Jose, CA 95148
Building Division (2),
Engineering Services